



THE NAVAJO NATION

OFFICE OF THE PRESIDENT & VICE PRESIDENT

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Navajo President Joe Shirley, Jr., vetoes Special Prosecutor Act, says amendments are ‘self-serving, counter to public interest’

WINDOW ROCK, Ariz. – Saying legislation to elevate the power of the Navajo Nation Council’s lawyer is “retaliatory in nature,” Navajo Nation President Joe Shirley, Jr., on Friday vetoed Resolution CAP-17-10, the Special Prosecutor Amendments Act.

“Using lawmaking authority in this way is self-serving and counter to the public interest,” the President said in his veto message to Navajo Nation Council Speaker Lawrence T. Morgan.

“The timing of this legislation unavoidably appears to be in reaction to the Attorney General’s decision to pursue and investigate possible wrongful conduct of financial discretionary spending by Council delegates,” he said. “The Attorney General reached his decision to do so independently and without consultation with me. As such, I believe we should allow the process to run its course without interference and without the enactment of what will appear to the public to be retaliatory measures.”

The legislation, sponsored by Council Delegate Orlanda Smith-Hodge, was passed by the Council on April 21 by a vote of 61-17.

Ms. Smith-Hodge said the legislation’s intent was to ensure that both Office of Legislative Counsel and the Attorney General work together.

However, according to Section 2024 C. II., the legislation gives the Chief Legislative Counsel or the Navajo Nation Council the power to remove a Special Prosecutor and to stop an investigation for any reason they choose, “on the basis of any condition.”

“First and foremost, this resolution serves to diminish the independence of the Attorney General and the Courts, violates the separation of powers doctrine, creates obvious conflicts of interest, is designed to shield and insulate members of the Navajo Nation Council from investigation of alleged misconduct, and unavoidably appears to be retaliatory in nature,” the President said.

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– Navajo Nation President Joe Shirley, Jr.

He said the legislation would also require preliminary information obtained by the Attorney General’s Office, the White Collar Crime Unit, the Prosecutor’s Office, or any other authorized entity concerning possible misconduct of a government official to be presented, reviewed and referred by the Navajo Nation Council *before* a preliminary investigation and appointment of a Special Prosecutor could be pursued.

The legislation would allow the Council’s lawyer to seek investigations of Executive Branch officials, and to hire a special prosecutor.

Currently, that authority rests only with the Navajo Nation Attorney General.

“Obviously, under these amendments, the Council would have the authority to stop the pursuit of a preliminary investigation and the subsequent hiring of a Special Prosecutor when the subject of the investigation is a member of the Council,” the President said.

The President said the legislation would expand the authority the Council’s lawyer, who represents only the Council’s interests, drafts legislation and defends the Council’s political positions, unlike the Attorney General who represents all of the Navajo People’s interests.

“This expansion of authority clearly tilts the balance of power among the three branches of Navajo government to that of the Legislative Branch,” President Shirley said. “Doing so would create a single superior Branch of government, and dispense with the concept of separation of powers as envisioned by the Council in 1989.”

He said the separation of powers serves several goals; it prevents concentration of power in one branch – historically viewed as the root of tyranny – ensures governmental transparency, and provides each branch with means to defend against the encroachment and overreach of authority by the other two.

In 1989, the Council sought to prevent the concentration and centralization of power without real checks on its exercise with the adoption of CD-68-89, he said.

“Experience shows that this deficiency in the government structure allows for, invites and has resulted in the abuse of power,” the Council stated in its 1989 resolution. “The lack of definition of power and separation of legislative and executive functions have also allowed the legislative body to overly involve itself in the administration of programs thereby demonstrating a need to limit the legislative function to legislation and policy decision making and further limit the executive function to implementation of laws and representation of the Navajo Nation.”

The President said the Special Prosecutor Amendments legislation “brings us back to December 15, 1989, when the Council sought to prevent this distortion of government functions. The Council itself saw the need for a clear separation and equal distribution of powers among the three Branches in order to check ‘the abuse of power’ by one Branch, specifically naming the Legislative Branch.”

The President said the legislation would give license to the Council’s lawyer to strengthen the political interests of Council members through investigations and potential prosecutions of Executive Branch officials. At the same time, it would protect Council members from similar investigations and prosecutions for alleged ethical and criminal infractions.

The President noted that the legislation creates obvious conflicts of interest for the Council by empowering it to confirm judges of the Special Division of the Window Rock District Court, the body charged with appointing and contracting with the Special Prosecutor. It would also be the final decision-maker on whether good cause exists to remove an official or not.

That would make the Council privy to information prior to and during the course of any investigation, the President said.

“Regardless of whether the allegations are proven during the prosecution phase or not, being privy to such information would unfairly affect the Council’s decision to remove an official,” he said. With this legislation, he said, “the Navajo Nation Council is now the investigator, prosecutor, judge and jury.”

The President said the original role, intent and responsibility of the Chief Legislative Counsel was to provide legislative drafting services and legal advice to the Council and Legislative Branch entities.

These amendments create an unnecessary duplication of services already provided for under the current law, he said.

“From a fiduciary and financial perspective, especially considering the Nation’s current multi-million dollar budget deficit, this resolution lacks any information about how much this duplication of services will cost,” he said.

“For us as leaders to expect our citizens to have respect for our governmental processes on their behalf, we cannot betray that trust with resolutions that appear to serve our interests rather than theirs as Resolution CAP-17-10 so clearly does,” the President said.

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